



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT)	PDC CASE NO: 04-312
ACTION AGAINST)	
)	Amended Notice of Administrative
Edmund T. Orcutt 2002)	Charges
Campaign Committee)	
)	
Respondent.)	

IT IS ALLEGED as follows:

I.
JURISDICTION

Jurisdiction of this proceeding is based on Chapter 42.17 RCW, the Public Disclosure Act, Chapter 34.05, Administrative Procedure Act, and Title 390 WAC.

II.
LAW

RCW 42.17.060(1) states in part: "All monetary contributions received by a candidate or political committee shall be deposited by the treasurer or deputy treasurer in a depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution."

RCW 42.17.080 (2) states, in part: "At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters...a report containing the information required by RCW 42.17.090: (a) On the twenty-first day and the seventh day immediately preceding the date on which the election is



held; and (b) On the tenth day of the first month after the election...and (c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.”

RCW 42.17.080 (3) states: “For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, each Friday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

RCW 42.17.090 (1) states, in part: “Each report required under RCW 42.17.080 (1) and (2) shall disclose the following: (a) The funds on hand at the beginning of the period; (b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign... (d) all other contributions not otherwise listed or exempted... (f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report and the amount, date and purpose of such expenditure... (h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days...”

RCW 42.17.105 requires candidates during the eight-day period preceding a primary election and the twenty-one day period preceding a general election, to report within forty-eight hours, contributions received during the period in the aggregate from one source of more than \$1,000.

RCW 42.17.710(1) states: “During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.”

RCW 42.17.020 (38) states “State legislative office” means the office of a member of the state house of representatives or the office of a member of the state senate.

RCW 42.17.020 (39) states in part: “State office” means state legislative office ...

RCW 42.17.020 (40) states “State official” means a person who holds a state office.

III. **BACKGROUND**

On December 27, 2002, a letter was sent to the Edmund Orcutt Campaign for Washington State Representative in the 18th Legislative District, Position 2, informing the campaign that a limited scope audit was being conducted with regard to the 2002 election cycle. The audit was conducted by the Public Disclosure Commission (PDC) staff pursuant to its authority under Chapter 42.17 RCW.

The audit covered activity from the start of the campaign, May 3, 2002, through January 31, 2003. The initial review of the reports filed by the Orcutt Campaign, and the back-up documentation requested to verify unreported information, was completed by the end of May 2003. Staff met with Representative Orcutt in May 2003 and asked him to file the missing post-

election report and to amend previously filed reports. By the end of May 2003, Representative Orcutt was told the nature and extent of the campaign's reporting problems. During June 2003, the campaign consulted with Colleen Morse to facilitate correcting reports. On July 10, 2003, Laura Fuhrman, the campaign treasurer, filed missing and amended reports electronically. On August 21, 2003, a letter was received from Representative Orcutt explaining the discrepancies found during the audit, and on August 22, staff met with Representative Orcutt to further discuss his 2002 campaign. At that time, he was informed that enforcement action might occur.

The audit report and Auditor's Opinion Letter, sent November 12, 2003, covered 2002 campaign activity as it was reported through May 28, 2003, but acknowledges that amendments were filed in July 2003 and included campaign totals reported on the post election and amended reports.

The purpose of the audit was to examine the level of compliance with the overall reporting requirements of Chapter 42.17 RCW by reviewing a random number of contribution and expenditure activities undertaken by the campaign. The audit procedures consisted of, but were not limited to the following:

- Reviewing Public Disclosure Commission Monetary Contributions Reports (PDC Form C-3) and Expenditures Reports (PDC Form C-4) filed by the Orcutt Campaign, database information electronically filed by the campaign, and all documentation submitted by the Orcutt Campaign including bank statements, invoices, the check register and other memoranda;
- Reviewing the timeliness and accuracy of reporting monetary and in-kind contributions received, expenditures made and other information electronically filed by the campaign;
- Reviewing adherence to contribution limits for legislative candidates;
- Preparing PDC staff generated schedules.

IV.
FACTS

These charges incorporate the Audit Report, the Auditor's Opinion Letter and all Audit Schedules by reference.

Late and Inaccurate Filing of Reports (42.17.080 and 42.17.090) and Failure to Deposit Contributions Received within 5 Business Days (42.17.060)

From May 3, 2002 to January 31, 2003, the campaign made 52 monetary deposits totaling \$114,694.27, for which the campaign filed 35 C-3 reports showing \$113,551.36 in contributions received. The campaign failed to file C-3 reports for a June 14, 2002 deposit of \$150 and a December 13, 2002 deposit of \$925. Both deposits were included on bank statements. The \$150 deposit was also listed as a deposit on Schedule A to the Amended June 2002 C-4 report, but was not included on a C-3 report. **(See Exhibit 1, Page 5 and Exhibit 7)**

The \$925 deposit was listed on Schedule A to the December 2002 C-4 report. **(See Exhibit 7)** The contributions making up the \$925 deposit were listed in the records of the campaign along with copies of the checks received from three contributors. A draft C-3 showing \$925 was included in the campaign's records, but was not filed with the PDC. These contributions were received from Schering Plough External Affairs, Eli Lilly and Company and Fire Services Fund of Washington for \$625, \$250 and \$50 respectively.

In addition, a draft C-3 shows that the campaign received three additional contributions totaling \$1,260, which, according to campaign records, were received on December 15, 2002. The records indicate that these contributions were received from Kroger, Natural Gas PAC, and one small contributor for \$625, \$625 and \$10 respectively. Schedule A to the C-4 report for December 2002 listed a \$1,260 deposit. However, there is no evidence that the contributions were deposited into the campaign's bank account during December 2002. It was found that the contributions were deposited in March 2003. **(See Exhibits 1 & 8)**

The Orcutt Campaign reported receiving a total of eight in-kind contributions totaling \$13,523.23 during the 2002 election cycle. On July 10, 2003, the Orcutt Campaign filed amended C-4 reports and filed its post-election C-4 report confirming the receipt of \$23,945.62 in in-kind contributions received during the 2002 election cycle from 14 contributors. The additional in-kind contributions totaling \$10,264.13 were reported eight months after the 2002 election. (See Exhibits 2, 6 & 7)

According to amendments filed July 10, 2003, from May 3, 2002 to January 31, 2003, campaign documents and other records showed that the campaign expended \$100,111.18 and received \$23,845.62 in in-kind expenditures. Of the \$100,111.18 in monetary expenditures, the campaign only initially reported \$46,459.65 on eight Schedule A to C-4 reports through October 28, 2002. The total amount disclosed included one expenditure that was overstated by \$1,032.44.

According to a copy of the check register, bank statements, the Washington Electronic Disclosure System (WEDS) data file and invoices provided by the campaign, the May C-4 report, the June C-4 report, the 21-day pre-primary C-4 report, the 7-day pre-primary C-4 report, the 7-day pre-general C-4 report, the post-election C-4 report, the December C-4 report and the January 2003 C-4 report failed to disclose \$52,809.97 in monetary expenditures. These expenditures were not reported until eight months after the election when the campaign amended its pre election reports and filed its post-election C-4 report on July 10, 2003. (See Exhibits 3, 6 & 7) The late reported expenditures included significant expenditures not timely reported on the 7-day pre-general C-4 report, the post-election C-4 report and the December C-4 report as noted below:

According to a copy of the campaign check register, bank statements and receipts, the following expenses totaling \$27,310.20 were missing from the 7-day pre-general C-4 report initially filed on October 30, 2002:

Date in Check Register	Vendor	Amount
10/11/02	Reed Harris Direct Marketing	\$ 4,048.82
10/11/02	Reed Harris Direct Marketing	\$ 300.00

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10/11/02	Reed Harris Direct Marketing	\$ 3,974.22
10/16/02	Clark Co Central Committee	\$ 3,000.00
10/16/02	Reed Harris Direct Marketing	\$ 3,839.19
10/22/02	Graphic Communications	\$ 6,527.97
10/28/02	KGY Radio	\$ 100.00
10/28/02	KELA Radio	\$ 1,920.00
10/28/02	KUKN/KLOG	\$ 1,680.00
10/28/02	Entercom – KBAM	\$ 1,920.00
Total		\$ 27,310.20

As previously described, on July 10, 2003, the C-4 reports were amended with the missing expenditure information. **(See Exhibit 7)**

On July 10, 2003, the Orcutt Campaign filed its post-election C-4 report disclosing campaign activity from October 29, through November 30, 2002. According to a bank statement, the campaign check register and invoices, \$16,090.22 in expenditures were incurred from October 29, through November 30, 2002 that should have been timely reported by December 10, 2002 on the campaign's post-election C-4 report. Although the expenditures were not timely reported, they were recorded in the campaign's WEDS data file. Following is listing of those expenditures: **(See Exhibit 7)**

Date in Check Register	Vendor	Amount
10/29/02	Reed Harris Direct Marketing	\$ 5,074.00
10/29/02	KPAM Radio	\$ 170.00
10/29/02	The Columbian	\$ 806.29
10/29/02	Daily News	\$ 607.10
10/31/02	Graphic Communications	\$ 2,535.18

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10/31/02	Corbenic Group	\$ 2,535.00
11/01/02	Dave Mortenson	\$ 3,000.00
11/02/02	The Reflector	\$ 1,121.25
11/02/02	Daily News	\$ 200.00
11/02/02	USPS	\$ 7.40
11/18/02	House of Representatives	\$ 34.00
Total		\$ 16,090.22

On July 10, 2003, the Orcutt Campaign filed its December C-4 report, disclosing expenses made from December 1 to December 31, 2002. According to a bank statement, the campaign check register and invoices, \$4,678.68 in expenditures were incurred from December 1, through December 31, 2002 that should have been timely reported by January 10, 2003. Although the expenditures were not timely reported, they were recorded in the campaign's WEDS data file. Following is listing of those expenditures:
(See Exhibit 7)

Date in Check Register	Vendor	Amount
12/03/02	Edmund Orcutt	\$ 3,615.15
12/10/02	Kelso Drug	\$ 62.42
12/10/02	The Reflector	\$ 90.00
12/10/02	Corbenic Group	\$ 95.00
12/14/02	MBNA Credit Card	\$ 195.28
12/31/02	Edmund Orcutt	\$ 555.16
12/31/02	Edmund Orcutt	\$ 65.67
Total		\$ 4,678.68

**Failure to Report Campaign Liabilities for Campaign Expenditures
(42.17.080 and 42.17.090)**

The campaign incurred expenditures on an MBNA credit card issued to Edmund Orcutt that was dedicated for campaign use. Two payments to MBNA Credit Card of \$3,819.87 and \$798.03, made on September 28, and October 7, 2002, were for a series of expenses made on behalf of the campaign. According to the Visa statements provided by the campaign, the credit card charges and related payments were to pay for a series of expenses incurred from May – October 2002. The campaign did not provide receipts, and failed to provide a breakdown of the vendors paid with the credit card purchases. The series of expenses should have been disclosed as outstanding campaign obligations on Schedule B, Part 3 to the C-4 report, or if intended to be a loan by the candidate, then as in-kind contributions on Schedule B to the C-4 report and as loans on Schedule L to the C-4 report as the purchases occurred. The campaign purchases totaled \$5,279.75 and are summarized below: **(See Exhibit 4)**

MBNA transaction dates	Period total	Date Due to report obligation or Loan on Sch. B and/or Sch. L Report
5/01 – 5/31	\$ 733.32	6/10/2002
6/01 – 6/30	\$ 1,688.74	7/10/2002
7/01 – 8/20	\$ 1,655.56	8/27/2002
8/21 – 9/09	\$ 748.43	9/10/2002
9/10 – 10/8	\$ 258.42	10/15/2002
10/09 – 10/28	\$ 195.28	10/29/2002

Failure to File Special Reports of Contributions (RCW 42.17.105)

The Orcutt Campaign reported the receipt of two in-kind contributions of \$4,074 and \$7,649 from the Washington State Republican Party (WSRP) made on October 19 and October 22, 2002, respectively. The contributions were received during the special reporting period, which is within 21 days of the general election. The Orcutt Campaign reported receiving the contributions on the 7-day pre-general election C-4 report, which was filed eight days after the campaign accepted the in-kind contributions. The campaign failed to file the required special reports, due within 48 hours of receiving the contributions. In addition, the campaign received an in-kind contribution of \$9,917.24 from the WSRP, made on October 29, 2002, and failed to file the required special report disclosing receipt of the contributions within 48 hours of receipt. (See Exhibit 5)

Accepting Campaign Contributions During Session Freeze Period (RCW 42.17.710)

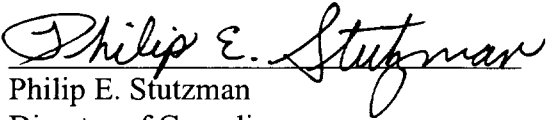
Campaign records and a draft C-3 not filed with the PDC show that the campaign received three contributions totaling \$1,260, on December 15, 2002. The records indicate that these contributions were received from Kroger, Natural Gas PAC, and one small contributor for \$625, \$625 and \$10 respectively. The contributions were not deposited until March 2003. The campaign was prohibited from accepting contributions during the “Session Freeze” period that started 30 days before the start of the 2003 regular legislative session, or on December 14, 2002. The campaign was sent notice of the “Session Freeze” prohibition on November 21, 2002. (See Exhibits 1, 8 & 9) The prohibition in RCW 42.17.710 applies to Representative Ed Orcutt because he is a State Official.

V.
CONCLUSION

Staff alleges, based on the facts specified in Section IV, that the Edmund T. Orcutt 2002 Campaign failed to timely report \$12,599.13 in monetary and in-kind contributions received, and \$63,074.10 in monetary and in-kind expenditures made. In addition, the Orcutt campaign failed to timely report campaign liabilities totaling \$5,279.75. The campaign also failed to deposit contributions within five business days of receipt totaling \$1,260.00, and failed to file required special reports of contributions received totaling \$21,640.24. Therefore, the Orcutt Campaign violated:

- RCW 42.17.080 and 42.17.090 by failing to timely and accurately report the receipt of monetary contributions totaling \$1,075;
- RCW 42.17.060(1) by failing to deposit contributions received within five business days of receipt totaling \$1,260;
- RCW 42.17.080 and 42.17.090 by failing to timely report in-kind contributions totaling \$10,264.13;
- RCW 42.17.080 and 42.17.090 by failing to timely report monetary campaign expenditures totaling \$52,809.97;
- RCW 42.17.080 and 42.17.090 by failing to report campaign liabilities for campaign expenditures made with a credit card totaling \$5,279.75; and
- RCW 42.17.105 by failing to file required special reports, due within 48 hours of receiving contributions within 21 days of the general election, totaling \$21,640.24.
- RCW 42.17.710 by accepting contributions totaling \$1,260.00 within 30 days of the start of the 2003 regular legislative session, during the “Session Freeze” prohibition period. The campaign was sent notice of the prohibition rules on November 21, 2002.

RESPECTFULLY SUBMITTED this 3rd day of December, 2003.


Philip E. Stutzman
Director of Compliance

Exhibits

- Exhibit 1 Campaign Records, Draft C-3 Reports, Audit Schedule 11
- Exhibit 2 Audit Schedule 6
- Exhibit 3 Expenditures Not Initially Reported on Schedule A to C-4 Reports
- Exhibit 4 Audit Schedule 13
- Exhibit 5 Audit Schedule 10
- Exhibit 6 C-1; C-4 Reports filed through October 30, 2002
- Exhibit 7 C-4 Reports filed July 10, 2003 and November 10, 2003
- Exhibit 8 Memo to File of Ed Orcutt Campaign Dated December 3, 2003
- Exhibit 9 Session Freeze Memo Sent to All State Elected Officials November 21, 2002